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## Homocide - Corpus Delicti - Body Missing

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the court in construing said statute.<sup>15</sup> There is, at least, one decision which has decided this question and reached a result contrary to the Colorado position.<sup>16</sup>

What, then, could have been the basis for the decision in the principal case? The court states that in the statute<sup>17</sup> adopted in 1913, now remaining and unchanged for forty-seven years, none of the states<sup>18</sup> promulgated by the Public Service Commission appear.<sup>19</sup>

It is submitted that in determining the utility or non-utility status of a given industry, the facts in each particular case must be the determining factor. However, the courts should give liberal interpretation to statutes which permit government regulation of business if public policy is to follow the trends it has established over the years in developing our economic system.

KERMIT EDWARD BYE.

**HOMICIDE — CORPUS DELICTI — BODY MISSING.** — Defendant was convicted of the murder of his wife who simply disappeared from her home, dropped out of sight and has not been heard from since. The prosecution contended that the evidence proved defendant's motive for doing away with his wife. He had coveted her estate, attempted to prepare her friends for an explanation of her departure, and was pleased at her subsequent disappearance. Moreover, he deceived her friends and the authorities in order to prevent an investigation and set about through forgeries and thefts to steal her property. Defendant then fled the country only to be apprehended at the Canadian border. The state contends his flight was precipitated by his fear of prosecution for the murder of his wife. The prosecution offered no evidence of the use of criminal means to accomplish death, produced no body and proved no confession. Defendant contends that there was insufficient evidence to establish the corpus delicti. On appeal the California District Court of Appeal, *held*, in homicide prosecutions, all that is required to prove death is circumstantial evidence sufficient to convince minds of reasonable men of existence of fact. *People v. Scott*, 1 Cal. Rptr. 600 (1960).

The trial court based its decision on two recent cases, *Regina v. Onufrejczyk*<sup>1</sup> an English decision, and *The King v. Horry*<sup>2</sup> a New Zealand de-

15. Public Utilities Commission v. Colorado Interstate Gas Co., 351 P.2d 241 (1960).

16. Industrial Gas Co. v. Public Utilities Commission, 135 Ohio St. 408, 21 N.E.2d 166 (1939) (Company had 50 miles of pipeline and supplied 19 industrial users, held: a public utility).

17. Colo. Rev. Stat. § 115-1-3 (1953).

18. Public Utilities Commission v. Colorado Interstate Gas Co., 351 P.2d 241 (1960). The Public Utilities Commission promulgated its own tests for determining public utility status: and are based on the nature of the service rendered to include, (1) whether a natural or virtual monopoly, (2) the exorbitance or reasonableness of the charges, (3) the arbitrary control to which its customers may be subjected, (4) whether or not the impact of its service, or the lack thereof, to a class of customers affects the state or community, (5) and whether the services rendered are needful and cannot be surrendered without obvious general loss and inconvenience.

19. Public Utilities Commission v. Colorado Interstate Gas Co., 351 P.2d 241 (1960) "We find no precedent for the rule as announced by the commission. It contains no standard whereby it could be applied with any degree of uniformity; it furnishes no guide whereby the supplier or the customer could determine the utility or non-utility status of the supplier."

1. [1955] 1 Q.B. 388.

2. [1952] N.Z.L.R. 111.

cision, which affirmed convictions of first degree murder solely<sup>3</sup> on circumstantial evidence. Here the courts held, "There may be other (as opposed to direct) facts so incriminating and so incapable of any reasonable explanation as to be incompatible with any hypothesis other than murder."

Lord Hale, the noted English jurist, developed the theory that the fact of death must be proved by direct evidence.<sup>4</sup> Contemporary authorities generally recognize certain exceptions to this rule, and these are: (1) cases of bodies missing at sea,<sup>5</sup> (2) infanticide prosecutions<sup>6</sup> and (3) eyewitness testimony that the body has been destroyed, rendering it impossible that it should ever be produced.<sup>7</sup>

Apparently, there are no reported cases exactly in point from any state or federal jurisdiction. Therefore, the English cases cited above provide the only real basis for an authoritative conclusion. Courts<sup>8</sup> and writers<sup>9</sup> alike are uniformly agreed that the fact of death may be proved by circumstantial evidence. However, cases supporting this contention are invariably qualified by the presence of proof of death consisting of (1) direct evidence of homicide<sup>10</sup> (2) identifiable remains<sup>11</sup> or (3) incriminating evidence coupled with confessions or admissions.<sup>12</sup> None seem to be so devoid of positive proof as the case at hand.

It seems unreasonable to assume that a person who successfully eliminates all traces of his victim should escape. On the other hand Lord Hale's rule should not be dismissed lightly.<sup>13</sup> History records instances of convictions on scanty evidence, followed by immediate execution, only to have the alleged victim appear later very much alive.<sup>14</sup>

3. In the *Onufrejczyk* case the court chose not to consider a bloodstain as direct evidence. A letter written by defendant in the *Horry* case, indicating knowledge of death was not considered.

4. "I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead . . . for the sake of two cases [where persons were executed for murders of others then alive but missing] . . ." 2 Hales, *Pleas of the Crown* 290 (1847). See also, 4 Blackstone Commentaries 358 (Lewis's ed. 1897).

5. *St. Clair v. U.S.*, 154 U.S. 134 (1894); see *U.S. v. Matthews*, 26 Fed. Cas. 1204, 1207 (No. 15,741b) (C.C. N.Y. 1843); *U.S. v. Gilbert*, 25 Fed. Cas. 1287, 1290 (No. 15,204) (C.C. Mass. 1834).

6. Generally it is necessary to prove existence of life before proving fact of death in infanticide prosecutions. *Shedd v. State*, 178 Ga. 653, 173 S.E. 847 (1934); *People v. Kirby*, 223 Mich. 440, 194 N.W. 142 (1923); *State v. Sogge*, 36 N.D. 262, 161 N.W. 1022 (1917); *State v. Merrill*, 72 W.Va. 500, 78 S.E. 699 (1913).

7. *People v. Watters*, 202 Cal. 154, 259 Pac. 442 (1927); *Ruloff v. People*, 18 N.Y. 17K9, (1858) (dictum).

8. *E. g.*, *People v. Clark*, 70 Cal. App. 531, 233 Pac. 980 (1922); see *e. g.*, *Inman v. State*, 23 Ala. 484, 127 So. 262 (1930); *Commonwealth v. Lettrich*, 346 Pa. 497, 31 A.2d 155, 158 (1943). *Contra*, *State v. Sogge*, 36 N.D. 262, 161 N.W. 1022 (1917).

9. See, *e. g.*, 1 Underhill, *Criminal Evidence* 37 (5th ed. 1956); 3 Warren, *Homocide* 270 (1938).

10. *People v. Wilkins*, 158 Cal. 530, 111 Pac. 612 (1910); *Commonwealth v. Gates*, 392 Pa. 557, 141 A.2d 219 (1958).

11. This category includes identifiable personal effects found on or near the remains. *Lewis v. State*, 220 Ala. 461, 125 So. 802 (1933); *People v. Hamilton*, 49 Cal. App. 30, 192 Pac. 467 (1920); *State v. King*, 111 Kan. 140, 206 Pac. 883 (1922).

12. *Lewis v. State*, *supra* note 11; *People v. Clark*, *supra* note 8; *Sullivan v. State*, 58 Neb. 716, 79 N.W. 721 (1899).

13. Morris, *Corpus Delicti and Circumstantial Evidence*, 68 L.Q. Rev. 391 (1952) "It is trite law that Lord Hale's statement in 2 Pleas of the Crown, 290—"I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead"—can no longer be read as requiring production of the corpse, or a vital part thereof, as a condition precedent to a conviction."

14. Starkie, *Evidence* 862 (4th ed.) "the accused shall not be convicted unless the death be first distinctly proved, either by direct evidence of the fact, or by inspection of the body; a rule warranted by melancholy experience of the conviction and execution

Five states, Colorado, Montana, New York, North Dakota and Texas,<sup>15</sup> aware of the inherent danger of incriminating circumstantial evidence, require some type of direct evidence. This statutory requirement eliminates any question as to the quantum or type of evidence necessary in North Dakota. This seems to be the logical approach, especially in those jurisdictions demanding the death penalty. Further appeal may result in the reversal of the decision here, but if not, legislation of the type found in North Dakota may necessarily result.

R. STEFANSON.

NAMES — CHANGE — RIGHTS OF PETITIONER AND SUFFICIENCY OF REASON. — Petitioner sought to change his surname from Rusconi to Bryan. A reason for the petition was the wife's distaste of the Italian heritage. The lower court upheld the objection of petitioner's relatives, that the petition was an "un-American" affront to persons of Italian origin. The Supreme Court of Massachusetts in reversing *held* that the right to change one's name is very broad; that objections of "un-Americanism" and the alleged affront to Italian people, did not constitute legal cause for denial of the petition. *In re Rusconi's Petition*, 167 N.E.2d 847 (Mass. 1960).

At common law mere adoption and use of a name constituted a permissible change without resorting to legal proceedings, if such change was not for a dishonest purpose.<sup>1</sup> State statutes were not meant to abrogate this common law right,<sup>2</sup> but rather to aid and facilitate recording such change.<sup>3</sup> The problem of statutory name change lies in the fact that the change is generally not a question of right but one of judicial discretion.<sup>4</sup> Several states have enacted statutes in this respect, which are in general agreement as to the requirements for name change.<sup>5</sup> In North Dakota an application to change a name

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of supposed offenders, charged with the murder of persons who survived their alleged murderers."

15. Colo. Rev. Stat. § 40-2-3 (1953) "... nor shall any person suffer the death penalty who shall have been convicted on circumstantial evidence alone."; Mont. Rev. Codes Ann. § 94-2510 (1947) "No person can be convicted of murder or manslaughter unless the death of the person, alleged to have been killed, and the fact of the killing by the defendant as alleged, are established as independent acts; the former by direct proof, and the latter beyond a reasonable doubt."; N.Y. Pen. Law § 1041 (1944) "What proof of death required — No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts; the former by direct proof, and the latter beyond a reasonable doubt."; N.D. Rev. Code § 12-2788 (1943) "Independent Facts Necessary to Prove Guilt. No person can be convicted of murder, manslaughter nor of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused as alleged, are established as independent facts, the former by direct evidence and the latter beyond a reasonable doubt."; Tex. Pen. Code art. 1204 (1925) "No person shall be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed."

1. See, e. g., *Smith v. United States Casualty Co.*, 197 N.Y. 420, 90 N.E. 947 (1910); *Petition of Merolevitz*, 320 Mass. 448, 70 N.E.2d 249, 250 (1946).

2. *Reinken v. Reinken*, 351 Ill. 409, 184 N.E. 639 (1933); *Huff v. State Election Bd.*, 168 Okla. 277, 32 P.2d 920 (1934).

3. See *In re Ross*, 8 Cal.2d 608, 67 P.2d 94 (1937); *In re Cohen*, 142 Misc. 852, 255 N.Y. Supp. 616, 617 (Sup. Ct. 1932).

4. *Don v. Don*, 142 Conn. 309, 114 A.2d 203 (1955); *Binford v. Reid*, 83 Ga. App. 280, 63 S.E.2d 345 (1951); *In re Taminosian*, 97 Neb. 514, 150 N.W. 824 (1915).

5. Examples of such enactments are: Cal. Code Civ. Proc. tit. 8, §§ 1275, 77, 78 (1955); Ga. Code Ann. c. 79-5 (1937); Ill. Ann. Stat. c. 96 (1958); Neb. Rev. Stat. § 61 (1958); N.D. Rev. Code § 32-2802 (1943).